

SEP 03 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE MELENDEZ ESTRADA,

Petitioner - Appellant,

v.

DORA B. SCHRIRO; et al.,

Respondents - Appellees.

No. 07-16498

D.C. No. CV-06-01519-ROS

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Arizona state prisoner George Melendez Estrada appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 2253. We review de novo, *Arrendondo v. Ortiz*, 365 F.3d 778, 781 (9th Cir. 2004), and we affirm.

Estrada contends that his aggravated sentence was imposed in violation of the Constitution because only one of the four aggravating circumstances found by the trial court was established in a manner consistent with the Sixth Amendment. The Arizona Court of Appeals decision rejecting this claim was neither contrary to, nor an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d)(1); *cf. Butler v. Curry*, 528 F.3d 624, 643, 648-49 (9th Cir.), *cert. denied*, 129 S. Ct. 767 (2008).

We construe Estrada's briefing of an uncertified issue as a motion to expand the certificate of appealability. *See* 9th Cir. R. 22-1(e). So construed, we deny the motion. *See Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (*per curiam*).

AFFIRMED.